

REMARKS/ARGUMENTS

Claims 1 - 19 are pending in the application.

The Examiner is thanked for the courtesy of a telephone interview on 24 August 2006. In this regard, the interview summary as stated by the Examiner in his Interview Summary dated 08/29/2006 accurately reflects the substance of such interview, namely that Applicant will file a proposed claim 1 and will invoke 35 USC 112, sixth paragraph, whereupon the Examiner will consider such amended claim.

In conformity with the foregoing, enclosed is an amended claim 1, whereupon Applicant invokes 35 USC 112, sixth paragraph, by virtue of its "means for friction fitting" feature of paragraph b. of amended claim 1, all in conformity with MPEP 2181 I.

Furthermore, claim 1 has been amended for the sake of clarity, and to emphasize in paragraph b. that the means for friction fitting provides for elastically friction fitting the coated media on the support for the nectar type bird feeder. For support of the "elastically" limitation, the Examiner's attention is respectfully directed to the specification of the instant application, page 6, six lines from the bottom of the page, as well as to Figs. 6 and 14.

CLAIM REJECTIONS – 35 USC § 102

The insect barrier device for use in preventing insect contamination of nectar type bird feeders as defined in Applicant's amended claim 1 includes:

- a. a coated media that is adapted to be placed via a mounting hole on a support for a nectar type bird feeder, and
- b. a means for friction fitting the coated media elastically on the support for the nectar type bird feeder, wherein the coated media is adapted to act as a physical barrier to block insect crawling routes along the support for the bird feeder.

With respect to the functional limitations contained in Applicant's amended claim 1, the Examiner's attention is respectfully directed to MPEP 2173.05(g), the second paragraph of which indicates that a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. The last paragraph of this MPEP section also indicates that limitations using the "adapted to" language serve to precisely define present structural attributes of interrelated component parts.

The Examiner has rejected, among others, claim 1 as being anticipated by Erickson. However, in contrast to Applicant's amended claim 1, Erickson does not provide a coated media that is adapted to be placed via a mounting hole on a support for a nectar type bird feeder. In addition, Erickson does not provide a means for friction fitting a coated media on a support for a nectar type bird feeder, and certainly does not provide a means for friction fitting a coated media elastically on a support for a nectar type bird feeder. In particular, it is respectfully submitted that the Erickson structure would not be capable of performing the intended use because rather than being friction fitted, and in particular elastically friction fitted, on a structure, the disk of Erickson is supported by being sandwiched between the caster assembly and the underside of the trap member 16. Further, the disk of Erickson is not constructed to stand up to exposure to the outdoor elements (Applicant's coated media is "water-resistant").

Applicant respectfully submits that Erickson does not teach or suggest all of the claim limitations of amended claim 1, and certainly does not show the identical invention in as complete detail as is contained in Applicant's claim 1, and therefore cannot be a proper reference under either MPEP 2131 or MPEP 2143.03.

Applicant further notes that despite the long-felt need for an adequate insect barrier device for preventing insect contamination of nectar type bird feeders (as evidenced by the myriad of "home remedy" solutions, water moats, and insecticide based devices proposed and produced over the years), no one has adequately solved the problem and certainly has not provided or suggested Applicant's solution, even though the Erickson patent issued more than eighty years prior to the filing of the present application.

In view of the foregoing discussion, Applicant respectfully requests reconsideration of the allowability of claim 1, as amended. In addition, Applicant requests reinstatement of those withdrawn claims that are dependent directly or indirectly on claim 1, namely claims 6 – 9 and 16. Although Applicant has attempted to be fully responsive to the outstanding Office Action, should the Examiner have any further comments, questions or suggestions, the undersigned would very much welcome a telephone call from him in order to discuss any outstanding issues and to expedite placement of the application into condition for allowance.

Respectfully submitted,



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